

**INTERLOCAL AGREEMENT BETWEEN THE CITY OF TACOMA AND THE PORT OF  
TACOMA REGARDING ON-GOING RIGHTS AND OBLIGATIONS  
AT JULIA'S GULCH**

**THIS INTERLOCAL AGREEMENT** ("Agreement") is made and entered into pursuant to the Interlocal Cooperation Act, Chapter 39.34 of the Revised Code of Washington, on this 6th day of June, 2014 by and between the City of Tacoma, a municipal corporation of the State of Washington (the "City") and the Port of Tacoma, a port district organized under the laws of the State of Washington (the "Port"). The Port and the City are collectively referred to herein as the "Parties."

**RECITALS**

**WHEREAS**, the City and the Port own, as tenants in common, that certain real property commonly referred to as Julia's Gulch, which real property is legally described and depicted on Exhibit A as attached hereto ("Julia's Gulch" or the "Property"); and

**WHEREAS**, the City and the Port, as common owners of the Property, have previously entered into agreements regarding the management of the Property among other matters (e.g. Agreement Between the Port of Tacoma, the City of Tacoma and Cascade Land Conservancy Regarding Julia's Gulch dated January 3, 2008) ; and

**WHEREAS**, the City and the Port seek, by this Agreement, to clarify certain rights and responsibilities regarding the Property; and

**WHEREAS**, Chapter 39.34 of the Revised Code of Washington allows local governments to enter into interlocal agreements to make the most efficient use of their powers by enabling them to work with other local jurisdictions on a mutually advantageous basis;

**NOW, THEREFORE**, pursuant to Chapter 39.34 RCW, the Parties hereby agree as follows:

**1. INCORPORATION OF RECITALS**

Each of the recitals set forth above and any definitions contained therein, as well as all Exhibits herein referenced are incorporated into this Agreement as an integral part hereof, and as though fully set forth herein.

**2. PURPOSE**

The purpose of this Agreement is to clarify the present state of rights and obligations the Parties have with regard to Julia's Gulch relevant to their intended use and ownership participation.

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### **3. PUBLIC USE/RELEASE/INDEMNIFICATION**

The City, with the Port's consent, has engaged in or supported various programs and activities centered on Julia's Gulch that encourage citizen participation in the upkeep and improvement of Julia's Gulch as a publicly accessible open space amenity. In this regard the Port recognizes that upkeep and trail improvements pursuant to Exhibit C, section V.I. of the January 3, 2008 Agreement, will be enhanced by a City contract with Metro Parks. While the Port, at present, intends to maintain its ownership interest in the Property, its focus and reason for jointly owning the Property, as a port district, differs from that of the City. Given that, the City has agreed to, and does hereby release the Port from all claims or liabilities that arise from the City's use of the Property as publicly accessible open space and agrees to indemnify the Port from such claims and liabilities except to the extent that any such claim or liability arises from the negligence or willful misconduct of the Port. If the claim or liability involves the concurrent negligence of the Parties, the indemnity provided hereby shall be applicable only to the extent of the percentage of each party's negligence. The Port acknowledges that, in the event that it ever requires the Property to cease being used as publicly accessible open space, this release and indemnity shall also terminate. The City agrees that, as long as the Property is kept open to the public, no fees will be charged for accessing or using the Property.

### **4. PUBLIC ACCESS FACILITATION RECOGNITION**

The foregoing notwithstanding, in recognition of its continued ownership interest in the Property, the City agrees that the Port will be recognized as a partner in any public access project at Julia's Gulch. Recognition will be proportional to the Port's contribution and/or ownership, approved in writing by the City and the Port, and will include, but is not limited to signage at two public access locations.

### **5. CANOPY REQUIREMENTS**

In addition to the foregoing, in the event that the City adopts an urban canopy requirement that is applicable to the Port, as an entity, the Port may claim all of Julia's Gulch as urban canopy it has contributed.

### **6. DESIGNATED CITY AND PORT REPRESENTATIVES**

For purposes of this Agreement, the Parties designated representatives are as follows:

6.1 City Representative:  
Peter Huffman, Director of Planning and Development Services

6.2 Port Representative:  
Evette Mason, Government Affairs Manager

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## **7. NO SEPARATE ENTITY CREATED**

This Agreement does not create any separate or administrative entity. This Agreement shall be administered by the Parties' representatives defined in Section 6.1 and 6.2 above.

## **8. MODIFICATION OF AGREEMENT**

This Agreement may be amended at any time in writing, upon approval of each Parties' respective legislative body.

## **9. DISPUTE RESOLUTION**

The designated representatives herein shall use their best efforts to resolve disputes between the Parties relevant to this Agreement. If the designated representatives are unable to resolve a dispute, then any responsible Project directors for each party shall review the matter and attempt to resolve it. If the Project directors are unable to resolve the dispute, the matter shall be reviewed by the department director or chief executive officer of each Party or his or her designee.

The Parties agree to exhaust each of these procedural steps before seeking to resolve disputes in a court of law or any other forum.

## **10. DURATION OF AGREEMENT AND TERMINATION**

This Agreement shall continue in effect unless and until either party gives written notice to the other of that party's intent to terminate. Termination shall become effective after ninety (90) days' passage from the notice of intent to terminate. Any disputes over termination shall be handled in accordance with Section 9. above and any other applicable provisions of this Agreement. If this Agreement is terminated, there is no Port financial commitment for past costs of the City of Tacoma or Metro Parks.

## **11. NOTIFICATION**

Any notice required or permitted to be given pursuant to this Agreement shall be in writing, and shall be sent postage prepaid by U.S. Mail, return receipt requested, to the following addresses or be electronic mail to the Parties' representatives defined in subsections 6.1 and 6.2 herein, unless otherwise indicated by the Parties to this Agreement.

## **12. VENUE**

This Agreement shall be deemed to be made in the County of Pierce, State of Washington, and the legal rights and obligations of the City and Port shall be

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determined in accordance with the laws of the state of Washington. All legal actions in connection with this Agreement shall be brought in the County of Pierce, State of Washington.

### 13. NO THIRD PARTY BENEFICIARIES

This Agreement is entered into solely for the mutual benefit of the Parties. This Agreement is not entered into with the intent that it shall benefit any other person or entity and no other such person or entity shall be treated as a third-party beneficiary of this Agreement.

### 14. SEVERABILITY

The provisions of this Agreement are hereby declared to be separate and severable, and the invalidity of any clause, sentence, paragraph, section, subsection, or portion of this Agreement or the invalidity of its application to any person or circumstance shall not affect the validity of its application to other persons and circumstances.

### 15. LEGAL OBLIGATIONS

This Agreement does not relieve either Party of any obligation or responsibility imposed upon it by law.

### 16. COPIES FILED WITH COUNTY AUDITOR OR POSTED ON PARTIES' WEB SITE

Copies of this Agreement shall either be filed with the Pierce County Auditor's Office after execution or posted on each parties' website listed by subject or other electronically retrievable public source, as allowed by RCW 39.34.040, and shall be filed with the respective party authorities.

IN WITNESS WHEREOF, the Parties have executed this Agreement this 27<sup>th</sup> day of September, 2014.

City of Tacoma

By

  
T.C. Broadnax  
City Manager

Port of Tacoma

By

  
John Wolfe  
CEO

APPROVED AS TO FORM:

  
City Attorney

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Date: \_\_\_\_\_

ATTEST:

*Doris Bonum*

City Clerk

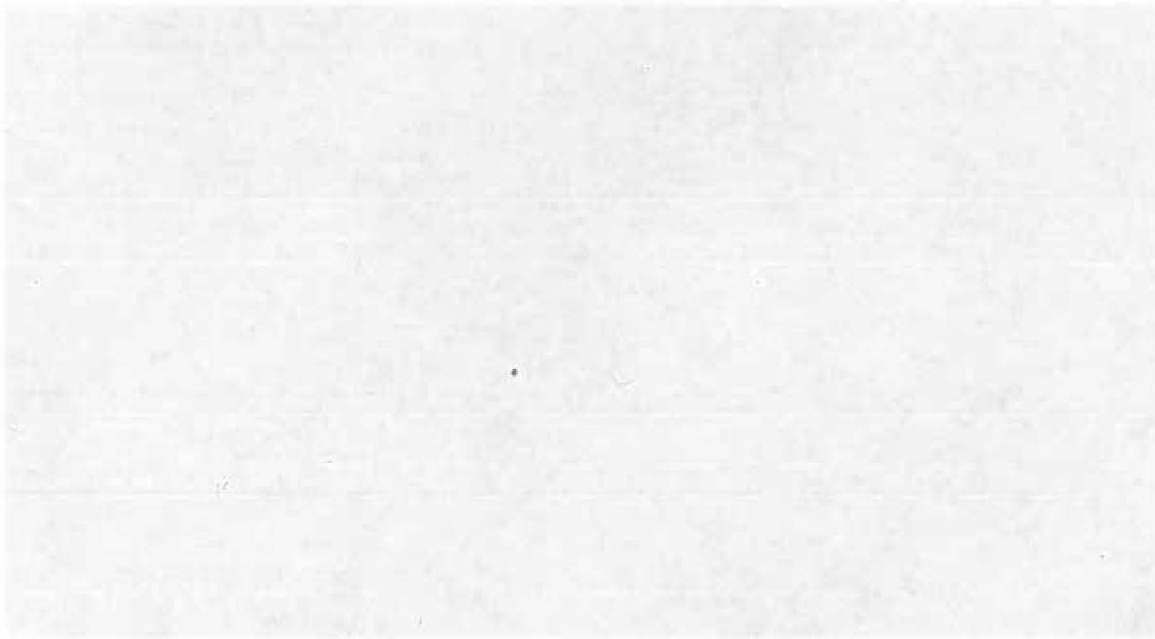
Date: 9-3-2014

APPROVED AS TO FORM:

*[Signature]*

Port Legal Counsel

Date: \_\_\_\_\_



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## JULIA'S GULCH LEGAL DESCRIPTION AND DEPICTION

Parcel 0321253000:

That part of the East half of the Northeast quarter of the Southwest quarter of Section 25, Township 21 North, Range 3 East of the W.M. lying east of Julia Gulch County Road.

Parcel 0321253042:

Southwest quarter of the Southeast quarter of the Southwest quarter of Section 25, Township 21 North, Range 3 East of the W.M.

Parcel 0321253043:

The East half of the Southeast quarter of the Southwest quarter of Section 25, Township 21 North, Range 3 East of the W.M., less County Road.

The Property

